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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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JUL - 8 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 1 of the Commission's)
Rules -- Competitive Bidding Proceeding)

WT Docket No. 97-82

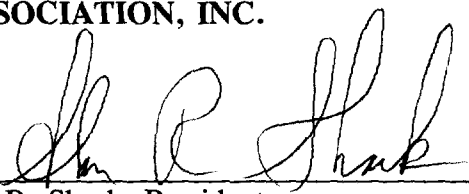
To: Acting Chief
Wireless Telecommunications Bureau

**REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

By: _____


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July 8, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") respectfully submits its Reply Comments in response to the Federal Communications Commission ("FCC" or "Commission") Public Notice requesting comment on broadband Personal Communications Service ("PCS") C and F Block installment payment issues.¹ AMTA does not intend to comment on the merits of the various proposals to defer, reduce or otherwise modify the C and F Block installment payment obligations. Rather, the Association supports the Comments of Creative Airtime Services, LLC ("Creative") and CONXUS Communications, Inc. ("CONXUS") which argue that, to the extent the FCC affords C and F block licensees relief, equivalent provisions must be made available to similarly situated licensees. Such entities include winners of 900 MHz Specialized Mobile Radio ("SMR") geographic licenses that qualified for small business status and are paying their auction bids through installment payments.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. The majority of these entities qualify as small business under all standards used to date by the FCC. A number of them currently are making installment payments on the debts they incurred as successful bidders for 900 MHz SMR

¹ Public Notice, Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues, DA 97-82, released June 2, 1997 ("Public Notice").

Metropolitan Trading Area ("MTA") geographic licensees.² Thus, the Association has a substantial interest in outcome of this proceeding.

II. BACKGROUND

2. The 1993 amendments to the Communications Act fundamentally altered the wireless regulatory landscape in several key respects. The Omnibus Budget Reconciliation Act of 1993 reclassified land mobile systems as either Commercial Mobile Radio Service ("CMRS") or Private Mobile Radio Service ("PMRS") and directed the FCC to achieve regulatory symmetry among services in each category to the extent possible, authorized the Commission to use competitive bidding procedures to award CMRS licenses under prescribed circumstances, and instructed the FCC to provide meaningful opportunities for CMRS auction participation by small businesses and other specified categories of applicants.³

3. In response to the last Congressional directive, the Commission has adopted various provisions intended to facilitate small business' ability to bid successfully in its auctions. In some instances, such as the PCS C and F block auctions, the Commission has limited participation in the competitive bidding process to entities of a certain economic size. The financial ceilings for these so-called "entrepreneur block" auctions were designed to ensure that "small" businesses, including start-up companies, would have an opportunity to secure PCS spectrum.

² See, 47 C.F.R. § 90.812.

³ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312 (1993) ("Budget Act").

4. By contrast, the FCC did not impose any economic limitation on entities qualified to participate in the 900 MHz SMR competitive bidding process. It did, however, adopt provisions for bidding credits, reduced down payments and installment payments for successful small and very small business eligibles.⁴ These concepts had been used previously in the narrowband PCS auction, and subsequently were incorporated into the PCS C and F block auction rules, in addition to the entrepreneur size limitation.⁵

5. The Public Notice seeks comment on a variety of proposals that have been presented to the FCC in recent months regarding modifications to the PCS C and F block installment payment obligations. It notes that those proposals range from permitting annual rather than quarterly installment payments to the substantial deferral of payment obligations or even a reduction in the principal amount of debt owed to a level comparable to that paid in the PCS A and B block auctions.

6. Both the Public Notice and the proposals under consideration limit their investigation to the obligations of C and F block winners. However, in the event the Commission determines that some form of installment payment relief is justified and in the public interest for those licensees, AMTA submits that equivalent provisions must be made applicable to similarly situated entities, including 900 MHz SMR MTA licensees that are using installment payments to pay their bid obligations.

⁴ 47 C.F.R. §§ 90.810, 90.811, and 90.812.

⁵ See, e.g., 47 C.F.R. §§ 24.309 and 24.709.

III. APPLICATION OF THE AUCTION RULES SHOULD NOT DISADVANTAGE CERTAIN CATEGORIES OF SIMILARLY SITUATED CMRS LICENSEES.

7. The economic difficulties experienced by certain C Block auction winners have been well chronicled. The proposed solutions to those problems that are referenced in the Public Notice raise complex issues; the FCC's resolution of these matters is likely to have long-term significance for the wireless telecommunications industry. Nonetheless, the aspect of particular importance for AMTA's members is that the Commission not inadvertently handicap 900 MHz SMR MTA licensees by retaining stringent installment payment obligations for them if it elects to liberalize the requirements for PCS operators.⁶

8. The 900 MHz SMR and PCS C block auctions overlapped considerably and were concluded during the same quarter of 1996. The majority of licenses won in each were issued during the summer of that same year and are conditioned on comparable construction requirements.^{7 8} The FCC has determined that some 26% of the successful 900 MHz SMR

⁶ In fact, 900 MHz MTA licensees already have been disadvantaged competitively because the FCC suspended its collection of broadband PCS installment payments in anticipation of reviewing its collection procedures, but failed to provide equivalent relief for 900 MHz small business winners. See, Order, DA 97-649, released March 31, 1997.

⁷ Compare 47 C.F.R. § 90.665 and 47 C.F.R. § 24.203.

⁸ In light of the fact that the majority of both categories of licenses were issued during the same quarter of 1996, AMTA also urges the Commission to review the interest rate applicable to 900 MHz SMR MTA licensee debt obligations. The FCC recently issued a Public Notice requesting comment on whether the interest rate for PCS licenses granted on or before September 17, 1996 should be reduced to 6.5% See, Public Notice, Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes, DA 97-1152, (rel. June 2, 1997). 900 MHz SMR MTA licensees currently are paying a 7% interest rate, a rate that must be reduced if necessary to remain consistent with comparable PCS obligations.

bidders qualified as small or very small businesses, and were eligible to utilize the Commission's installment payment provisions.⁹

9. Thus, a substantial number of 900 MHz SMR auction winners were required to secure financing sufficient to meet their government debt and to fund system implementation and operation during the same general time period referenced in the Public Notice proposals. To the best of the Association's knowledge, none of those entities have failed to meet their payment obligations when due¹⁰ and none have requested modifications of or relief from their auction debts. While the scope of the respective financial obligations of each licensee category may be very different, their bids presumably reflected the perceived relative values of the C and F block versus 900 MHz SMR MTA licenses. As stated by Creative:

...the Commission should not view the differing payment amounts or financial need as a key factor. Rather, the Commission should consider that SMR and PCS providers are competitors in the mobile communications marketplace. Creative at p. 5.

Similarly, CONXUS noted:

CONXUS was aware of the costs and risks when it initiated its business plan as well as the multiple competitors it would face in the marketplace. However, when it assessed its risks, it relied on the Congressional mandate and the Commission's rules and policies that the Commission would regulate similar, competitive services in the same manner to ensure that regulatory structure did not provide one service a competitive advantage over another. CONXUS is confident that it can successfully compete in the marketplace...if the Commission does not inadvertently skew the capital marketplace by providing more favorable regulatory treatment to the C and F block broadband PCS licensees. CONXUS at p. 3.

⁹ News Release, The FCC's 900 MHz Specialized Mobile Radio Auction Closes, released April 15, 1996.

¹⁰ The FCC did grant waivers for several 900 MHz SMR auction winners whose down payments were submitted slightly late due to confusion regarding the payment process. See, e.g., In the Matter of Cenkan Towers, L.L.C., DA 97-247, released February 4, 1997.

AMTA agrees fully that it would be inequitable, and contrary to the Commission's statutory obligations, to handicap licensees that have lived up to their financial obligations by providing, retroactively, more favorable economic terms to a class of similarly situated, competitive operators. The public interest considerations that will guide the FCC's decision on the issues raised in the Public Notice apply to all entities that have qualified for installment payments under FCC auction rules. The Commission's determinations regarding how those debt obligations are to be satisfied must be similarly even-handed.

IV. CONCLUSION

10. For the reasons described herein, AMTA urges the Commission to ensure that 900 MHz SMR MTA installment payment provisions are equivalent to those applicable to C and F block PCS licensees.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this July 8, 1997, caused to be mailed a copy of the foregoing Reply Comments to the following:

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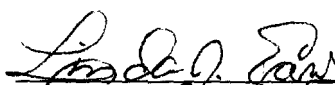
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